

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA, *et al.*,

Case No. 3:73-cv-00127-MMD-WGC

Plaintiffs,

ORDER

v.

WALKER RIVER IRRIGATION
DISTRICT, *et al.*,

Defendants.

I. SUMMARY

This is an approximately 100-year-old case regarding apportionment of the water of the Walker River, which begins in the high eastern Sierra Nevada mountains of California, and ends in Walker Lake in Northern Nevada. See *U.S. v. Walker River Irrigation Dist.*, 890 F.3d 1161, 1165-69 (9th Cir. 2018) (“*Walker IV*”) (reciting the history of this case); see also Google Maps, *Walker River*, <https://goo.gl/maps/jSuqbBJB7KbrBaW8> (last visited July 16, 2020) (showing the river). Before the Court is Plaintiff the United States of America’s motion for judgment on the pleadings seeking judgment on five affirmative defenses in response to Plaintiff’s counterclaims, which essentially seek to reopen a 1936 decree governing water rights in the Walker River to secure increased water rights for the Walker River Paiute Tribe (“Tribe”).¹ (ECF No. 2606 (“Motion”).) Because the Court finds Plaintiff is entitled to

¹Defendants filed a consolidated response (ECF No. 2619), and Plaintiff filed a reply (ECF No. 2622). More specifically, the Defendants who filed the consolidated response are Walker River Irrigation District, Desert Pearl Farms, LLC, Peri Family Ranch, LLC, Peri & Peri, LLC, and Frade Ranches, Inc., Lyon County, Centennial Livestock, the California State Agencies (State Water Resources Control Board, Department of Fish and Wildlife, and Department of Parks and Recreation), the Nevada Department of Wildlife, the Schroeder Group, and Mono County. (ECF No. 2619 at 12 n.1.) The Court will refer to them collectively as “Defendants” in this order.

1 judgment as a matter of law on these particular affirmative defenses,²—and as further
 2 explained *infra*—the Court will grant the Motion.

3 **II. BACKGROUND**

4 The Court incorporates by reference the factual and procedural background of this
 5 long-running case provided in *Walker IV*. See 890 F.3d at 1165-69. (See *also* ECF No.
 6 2606 at 3 n.2 (suggesting that reviewing the prior published decisions and opinions in this
 7 case is the best way to understand its history).) Briefly, the parties’ rights to use water from
 8 the Walker River are governed by a decree entered in 1936, as modified following a Ninth
 9 Circuit remand (the “1936 Decree”). See *Walker IV*, 890 F.3d at 1162, 1166-67. The
 10 dispute currently before the Court involves claims filed by Plaintiff as counterclaims in the
 11 1990s to effectively reopen the 1936 Decree to secure additional water rights for the Tribe.
 12 See *id.* at 1167-68. Defendants have filed answers to those counterclaims, in which they
 13 assert certain affirmative defenses to Plaintiff’s counterclaims. (ECF No. 2619 at 12 n.2
 14 (proffering ECF No. 2544 as a representative answer containing affirmative defenses
 15 common to most answers filed in this case).) Plaintiff’s Motion seeks dismissal of five
 16 particular affirmative defenses asserted by most Defendants; (1) laches; (2) estoppel and
 17 waiver; (3) no reserved rights to groundwater; (4) the United States lacks the power to
 18 reserve water rights after Nevada’s statehood; and (5) claim and issue preclusion. (ECF
 19 No. 2606 at 3.)

20 While the Court will discuss *Walker IV* throughout this order, by way of background,
 21 the *Walker IV* court reversed and remanded a decision of the district judge previously
 22 assigned to this case where he dismissed Plaintiff’s counterclaims under the doctrine of
 23 *res judicata*. See 890 F.3d at 1168-69, 1172-73. However, the *Walker IV* court also
 24 affirmed the prior district judge’s decision that the Court has jurisdiction to adjudicate
 25 Plaintiff’s counterclaims. See *id.* at 1169-72. Plaintiff’s Motion can be conceptualized as
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27 ²This finding does not preclude Defendants from continuing to argue on the merits
 28 that the “general principles of finality and repose[.]” *Walker IV*, 890 F.3d at 1173, should
 bar Plaintiff from reopening the 1936 Decree, as discussed herein.

1 an opening skirmish that will not fully resolve the larger battle on the merits of Plaintiff's
2 counterclaims, which, with its jurisdiction confirmed by *Walker IV*, the Court will preside
3 over in subsequent proceedings. *See id.*

4 **III. LEGAL STANDARD**

5 "Because a Rule 12(c) motion is functionally identical to a Rule 12(b)(6) motion, the
6 same standard of review applies to motions brought under either rule." *Gregg v. Hawaii,*
7 *Dep't of Pub. Safety*, 870 F.3d 883, 887 (9th Cir. 2017) (citation and internal quotation
8 marks omitted). "A judgment on the pleadings is properly granted when, taking all the
9 allegations in the pleadings as true, the moving party is entitled to judgment as a matter
10 of law." *Id.* (citation and internal quotation marks omitted).

11 **IV. DISCUSSION**

12 Defendants spend most of their response to the Motion arguing about general
13 principles of finality and repose. (ECF No. 2619.) But as Plaintiff points out in reply,
14 Defendants largely concede Plaintiffs have the correct understanding of the law when it
15 comes to the specific affirmative defenses targeted by the Motion. (ECF No. 2622.) Thus,
16 much of Defendants' response is beside the point as to the narrow issues presented in
17 Plaintiff's Motion. Defendants' response instead signals to the Court that Plaintiff's
18 counterclaims may present complex issues on the merits—but those issues are not yet
19 squarely before the Court.

20 Indeed, Defendants' primary arguments in their response highlight—and fall
21 within—the tension created by the Ninth Circuit's *Walker IV* opinion that will likely have a
22 significant impact on the merits of this case. On the one hand, the *Walker IV* court clearly
23 stated that "traditional claim preclusion and issue preclusion do not apply" to Plaintiff's
24 counterclaims. 890 F.3d at 1172. On the other hand, citing *Arizona v. California*, 460 U.S.
25 605, 619 (1983) ("*Arizona II*"), the *Walker IV* court stated Plaintiff's "counterclaims are
26 'subject to the general principles of finality and repose, absent changed circumstances or
27 unforeseen issues not previously litigated.'" 890 F.3d at 1173. When it comes to resolving
28 the merits of Plaintiff's counterclaims, the legal tension between these two statements may

1 be difficult to resolve. Moreover, because of the latter statement, nothing in this order
2 should be interpreted to foreclose Defendants from arguing that general principles of
3 finality and repose preclude the Court from reopening the 1936 Decree in subsequent
4 proceedings in this case. And, of course, the principles of finality and repose are similar in
5 some senses to res judicata, estoppel, waiver, and laches. However, the caselaw is
6 overwhelmingly on Plaintiff's side as pertinent to its Motion, leading the Court to find that
7 Defendants may not explicitly assert the affirmative defenses challenged in the Motion.

8 The Court will address each of the challenged affirmative defenses in turn, *infra*—
9 after first addressing the preliminary matter of whether to consider Defendants' exhibits
10 attached to their response. But this order obviously does not resolve Plaintiff's
11 counterclaims.

12 **A. Considering Exhibits**

13 Defendants attached several exhibits to their response. (ECF Nos. 2619-1 through
14 2619-14.) Plaintiff replies that the Court should not consider these exhibits, and requests
15 the Court set a supplemental briefing schedule if it decides to consider the exhibits and
16 thus treats Plaintiff's Motion as one for summary judgment. (ECF No. 2622 at 7-8; see
17 *also id.* at 8 n.24.) The Court agrees with Plaintiff it is more appropriate to resolve the
18 Motion based solely on the pleadings (*id.* at 7-8), and therefore declines to consider the
19 exhibits.

20 "If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are
21 presented to and not excluded by the court, the motion must be treated as one for
22 summary judgment under Rule 56." Fed. R. Civ. P. 12(d). "However, judgment on the
23 pleadings is improper when the district court goes beyond the pleadings to resolve an
24 issue; such a proceeding must properly be treated as a motion for summary judgment."
25 *See Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989)
26 (citations omitted). Thus, the Court starts from the presumption it should not consider the
27 exhibits, and recognizes it can only consider them if it converts Plaintiff's Motion into one
28 for summary judgment.

1 The Court declines to convert Plaintiff's Motion into one for summary judgment, and
 2 therefore declines to consider the exhibits Defendants attached to their response. "[T]he
 3 central question [in determining whether to convert a Rule 12 motion into one for summary
 4 judgment] is whether the proffered materials and additional procedures required by Rule
 5 56 will facilitate disposition of the action or whether the court can base its decision upon
 6 the face of the pleadings." *Dreamdealers USA, LLC v. Lee Poh Sun*, Case No. 2:13-cv-
 7 1605-JCM-VCF, 2014 WL 3919856, at *3 (D. Nev. Aug. 12, 2014) (citations omitted). As
 8 further explained *infra*, the Court can base its decision on the face of the pleadings. Thus,
 9 there is no need to convert Plaintiff's Motion into one for summary judgment. Moreover,
 10 declining to consider Defendants' exhibits better aligns with the judgment on the pleadings
 11 analysis the Court must conduct. See *Hal Roach*, 869 F.2d at 1150; see also *Ricketts v.*
 12 *CBS Corps.*, 439 F. Supp. 3d 1199, 1199 n.2 (C.D. Cal. 2020), *reconsideration denied*,
 13 Case No. CV1903895DSFMRWX, 2020 WL 3124218 (C.D. Cal. Mar. 19, 2020) ("a motion
 14 for judgment on the pleadings is based on the factual allegations contained in the
 15 challenged pleading[,] and evidentiary matters outside the pleadings are not relevant to
 16 that determination.") (internal quotation marks, punctuation, and citations omitted). The
 17 Court therefore excludes Defendants' exhibits from consideration in ruling on Plaintiff's
 18 Motion.

19 **B. Laches**

20 Plaintiff first argues the equitable defense of laches does not apply when, as here,
 21 Plaintiff is acting in its sovereign capacity to protect a property right held in trust by the
 22 United States for the benefit of an Indian tribe. (ECF No. 2606 at 7-22; see also *id.* at 9-
 23 10.) Defendants respond that "even if laches, waiver, and estoppel do not apply in the
 24 most technical sense to the [Plaintiff's] claims, they, like res judicata, at a minimum inform
 25 the principles of finality and repose that do limit and preclude the [Plaintiff's] claims." (ECF
 26 No. 2619 at 49.) That may be true, but it also does not make Plaintiff's assertion any less
 27 true. The Court thus agrees with Plaintiff.

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1 Plaintiff asserts *Winters*³ rights in its counterclaims. (ECF No. 2606 at 9-11; see
 2 also ECF Nos. 58, 59 (counterclaims).) *Winters* rights are “federal reserved water rights”
 3 that apply to Indian reservations, based on the implication that the federal government
 4 “reserves appurtenant water then unappropriated to the extent needed to accomplish the
 5 purpose of the reservation” when the government creates an Indian reservation. *Agua*
 6 *Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist.*, 849 F.3d 1262, 1268
 7 (9th Cir. 2017) (“*Agua Caliente*”) (citations omitted). The Supreme Court’s recognition of
 8 *Winters* rights “stems from the belief that the United States, when establishing
 9 reservations, intended to deal fairly with the Indians by reserving for them the waters
 10 without which their lands would have been useless.” *Id.* (citations and internal punctuation
 11 omitted). But “the *Winters* doctrine only applies in certain situations: it only reserves water
 12 to the extent it is necessary to accomplish the purpose of the reservation, and it only
 13 reserves water if it is appurtenant to the withdrawn land.” *Id.* (citations omitted). “Once
 14 established, however, *Winters* rights vest on the date of the reservation and are superior
 15 to the rights of future appropriators.” *Id.* (citations, internal quotation marks, and
 16 punctuation omitted).

17 Laches is not available as a defense to Plaintiff’s assertion of *Winters* rights in its
 18 counterclaims. See *Walker IV*, 890 F.3d at 1168-69, 1174 (reversing and remanding
 19 district court order in this case that dismissed the same counterclaims at issue here, with
 20 laches as one alternative basis for the ruling, though not analyzing the district court’s
 21 laches finding in detail); see also *U.S. v. Ahtanum Irr. Dist.*, 236 F.2d 321, 334 (9th Cir.
 22 1956) (“No defense of laches or estoppel is available to the defendants here for the
 23 Government as trustee for the Indian Tribe, is not subject to those defenses.”); *U.S. v.*
 24 *Washington*, 853 F.3d 946, 967 (9th Cir. 2017) (“The United States cannot, based on
 25 laches or estoppel, diminish or render unenforceable otherwise valid Indian treaty rights.”);
 26 *Swim v. Bergland*, 696 F.2d 712, 718 (9th Cir. 1983) (“Laches or estoppel is not available
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28 ³*Winters v. United States*, 207 U.S. 564 (1908).

1 to defeat Indian treaty rights.”); *U.S. v. State of Cal.*, 332 U.S. 19, 40, *supplemented sub*
 2 *nom. U.S. v. California*, 332 U.S. 804 (1947), *recognized as superseded by statute on*
 3 *other grounds in Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S. Ct. 1881, 1887
 4 (2019) (“The Government, which holds its interests here as elsewhere in trust for all the
 5 people, is not to be deprived of those interests by the ordinary court rules designed
 6 particularly for private disputes over individually owned pieces of property; and officers
 7 who have no authority at all to dispose of Government property cannot by their conduct
 8 cause the Government to lose its valuable rights by their acquiescence, laches, or failure
 9 to act.”) (footnote omitted). Defendants’ laches argument in its response (ECF No. 2619
 10 at 49-65) buckles under the substantial weight of this caselaw.

11 It is true, as Defendants argue (ECF No. 2619 at 64), that the Walker River Indian
 12 Reservation was not created by a treaty. See *U.S. v. Walker River Irr. Dist.*, 104 F.2d 334,
 13 335 (9th Cir. 1939) (“*Walker III*”) (“The Walker River Indian Reservation was set aside by
 14 departmental action on November 29, 1859 for the use of the Pahute tribe.”). Defendants
 15 attempt to distinguish *Washington* (and implicitly *Swim*) on this basis. (ECF No. 2619 at
 16 63-65.) However, the Ninth Circuit found in *Walker III* that the lack of a treaty did not
 17 preclude its recognition of the Walker River Tribe’s *Winters* rights. See *id.* at 336 (“We see
 18 no reason to believe that the intention to reserve need be evidenced by treaty or
 19 agreement.”), 339-40 (“We hold that there was an implied reservation of water to the extent
 20 reasonably necessary to supply the needs of the Indians.”). Indeed, *Walker III* emphasized
 21 that the federal government’s intent in creating the reservation, and obligations to the Tribe
 22 because of its relationship to the Tribe as a trustee, are more important in determining
 23 whether *Winters* rights exist than which type of document establishes the reservation. See
 24 *id.* at 336. Thus, the Court does not find that the lack of a treaty creating the reservation
 25 at issue here a meaningful distinction between this case and the cases referenced in the
 26 preceding paragraph. To the contrary, the Court finds that laches is unavailable as an
 27 affirmative defense because Plaintiff is acting in its sovereign capacity to protect a property
 28 right held in trust by the United States for the benefit of the Tribe.

1 In sum, the Court will grant Plaintiff's Motion as to Defendants' affirmative defense
2 of laches.

3 **C. Waiver and estoppel**

4 For similar reasons, the Court will also grant Plaintiff's Motion as to Defendants'
5 asserted affirmative defenses of waiver and estoppel. The parties' arguments are basically
6 the same as they are for laches (ECF Nos. 2606 at 7-22, 2619 at 45-65, 2622 at 17-21),
7 and the Court again agrees with Plaintiff these defenses are not strictly available to
8 Defendants in this case. *See supra* Section IV.B.; *see also United States v. City of*
9 *Tacoma, Wash.*, 332 F.3d 574, 581 (9th Cir. 2003) ("there can be no argument that
10 equitable estoppel bars the United States' action because, when the government acts as
11 trustee for an Indian tribe, it is not at all subject to that defense."). Moreover, the Ninth
12 Circuit rejected an estoppel argument in *Walker III*. *See* 104 F.2d at 339-40. Thus,
13 Defendants cannot assert equitable estoppel or waiver in this case.

14 **D. No reserved rights for groundwater**

15 Plaintiff also argues Defendants' asserted affirmative defense that the *Winters*
16 doctrine does not apply to groundwater is foreclosed by the Ninth Circuit's decision in
17 *Agua Caliente*. (ECF No. 2606 at 22; *see also, e.g.*, ECF No. 2544 at 5 (including as the
18 eleventh affirmative defense, "[t]he implied reservation of water rights doctrine does not
19 apply to groundwater.")) And as Plaintiff points out in reply (ECF No. 2622 at 10-11),
20 Defendants do not really respond to this argument, but instead pivot to what Defendants
21 themselves included as a separate affirmative defense (ECF No. 2544 at 5 (*compare*
22 *Eleventh Affirmative Defense with Twelfth Affirmative Defense*)) to argue that *Agua*
23 *Caliente* favors another one of Defendants' merits positions (ECF No. 2619 at 65-67).

24 The Court agrees with Plaintiff. *Agua Caliente* establishes that the *Winters* doctrine
25 applies to groundwater. *See* 849 F.3d at 1270 ("And while we are unable to find controlling
26 federal appellate authority explicitly holding that the *Winters* doctrine applies to
27 groundwater, we now expressly hold that it does.") (footnote omitted). The Court will
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1 therefore grant Plaintiff's Motion as to Defendants' asserted defense that the *Winters*
 2 doctrine does not apply to groundwater.

3 **E. U.S.'s power to reserve water rights after Nevada's statehood**

4 Plaintiff next argues Defendants' asserted affirmative defense that Nevada
 5 becoming a state deprived the United States of the power to reserve water for the benefit
 6 and use of federal land is also contrary to governing law. (ECF No. 2606 at 24-28; see
 7 also, e.g., ECF No. 2544 at 5 (asserting as the thirteenth affirmative defense that "[t]he
 8 United States had no power, after Nevada became a State on October 31, 1864, to reserve
 9 water for the benefit and use of federal land.".) Defendants concede Plaintiff is correct.
 10 (ECF No. 2619 at 67 ("[Plaintiff is] correct that, even after Nevada became a state, the
 11 United States continued to have the power to reserve water for its property under the
 12 Property Clause.".) Thus, while there is no real dispute to resolve here, the Court will also
 13 grant Plaintiff's Motion as to this affirmative defense. See also *U.S. v. Dist. Court In & For*
 14 *Eagle Cty., Colo.*, 401 U.S. 520, 522-23 (1971) ("[T]he Federal Government had the
 15 authority both before and after a State is admitted into the Union 'to reserve waters for the
 16 use and benefit of federally reserved lands.'" (citations omitted); *Walker III*, 104 F.2d at
 17 339-40 (finding the *Winters* doctrine applied to this case, and created rights dating to the
 18 creation of the reservation in 1859, even though Nevada subsequently became a state).

19 **F. Claim and issue preclusion**

20 Plaintiff finally argues that Defendants' asserted defenses of claim and issue
 21 preclusion are barred by the Ninth Circuit's decision in *Walker IV*. (ECF No. 2606 at 28-
 22 29.) Defendants generally respond with their arguments about finality and repose
 23 addressed *supra* at the beginning of Section IV. (ECF No. 2619 at 25-45.) But the Ninth
 24 Circuit was quite clear in *Walker IV*: "traditional claim preclusion and issue preclusion do
 25 not apply." 890 F.3d at 1172 (citation omitted). The Court will therefore also grant Plaintiff's
 26 Motion as to Defendants' asserted affirmative defenses of claim and issue preclusion.

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1 In addition, and separately, Plaintiff attacks some affirmative defenses and
2 arguments not raised in its Motion throughout its reply because Defendants raised them
3 in their response, and basically asks the Court to enter judgment as a matter of law on
4 those defenses and arguments at this time if the Court is so inclined. (ECF No. 2622; see
5 also *e.g.*, *id.* at 12-13 (attacking Defendants' Twelfth Affirmative Defense because
6 Defendants raised it in their response even though the Motion only targeted their Eleventh
7 Affirmative Defense).) The Court is not so inclined. It would be inappropriate to grant
8 judgment to Plaintiff on something Plaintiff did not raise in its Motion. No doubt, many
9 issues and arguments remain for the Court to resolve in this case before it can conclusively
10 resolve Plaintiff's counterclaims. But this order only addresses the affirmative defenses
11 explicitly challenged in Plaintiff's Motion.

12 **G. Leave to amend**

13 Defendants request leave to amend their answers if the Court grants Plaintiff's
14 Motion. (ECF No. 2619 at 70.) Leave will not be granted because amendment would be
15 futile. See Fed. R. Civ. P. 15(a) (providing that leave to amend should generally be granted
16 unless, among other reasons, amendment would be futile); see also *Foman v. Davis*, 371
17 U.S. 178, 182 (1962). As explained *supra*, Defendants' asserted affirmative defenses
18 challenged in Plaintiff's Motion fail as a matter of law. Defendants could not amend their
19 answers to make these affirmative defenses legally viable. The Court therefore declines
20 to grant Defendants leave to amend.

21 **V. CONCLUSION**

22 The Court notes that the parties made several arguments and cited to several cases
23 not discussed above. The Court has reviewed these arguments and cases and determines
24 that they do not warrant discussion as they do not affect the outcome of the Motion.

25 It is therefore ordered that Plaintiff's motion for judgment on the pleadings (ECF
26 No. 2606) is granted.

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1 It is further ordered Plaintiff is entitled to judgment as a matter of law in its favor on
2 the following affirmative defenses: (1) laches; (2) estoppel/waiver; (3) no reserved rights
3 to groundwater; (4) the United States is without the power to reserve water rights after
4 Nevada's statehood; and (5) claim and issue preclusion.

5 DATED THIS 20th day of July 2020.

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8 MIRANDA M. DU
9 CHIEF UNITED STATES DISTRICT JUDGE
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